

APPENDIX H

UNNECESSARY FORCE

The San José Police Department (SJPD) has guidelines, policies and procedures for the officers on the subject of the use of force¹, what is considered objectively reasonable force², what and when the escalation of force³ occurred, and reporting requirements of the use of force⁴ from the officers. The officer's supervisor or command staff do investigate the force used by the officers; however, the investigations are a case by case basis only. The Office of the Independent Police Auditor (IPA) reviews the investigations of these cases and looks for patterns and trends arising from all these investigations. The objective is to look for problem areas and recommend preventive plans for the Department. Therefore, in an effort to analyze the Use of Force investigations, the Use of Force complaints are divided into two categories: Class I and Class II. Class I cases involve those complaints in which the complainant required emergency medical attention for their injuries. Class II cases include those complaints in which the complainant did not require immediate medical care.

- 1 The San José Police Department Duty Manual, L1500, for the Use of Force is as follows: At times, officers are confronted with situations where control is required to effect arrests or protect the public safety. Attempts will be made to achieve control through advice, warnings, and persuasion. However, in situations where resistance, a threat to life, or a threat of physical force against officers or others is encountered and verbal persuasion has not been effective, is not feasible, or would appear to be ineffective, an officer may use objectively reasonable force. In the event deadly force is utilized, a thorough investigation will be conducted. All use of force will be thoroughly documented, reviewed by supervisory or command staff, and investigated when necessary.
- 2 The San José Police Department Duty Manual, L1501.1, for Objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force. Objectively reasonable force is not judged with hindsight, and will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. This policy guideline applies to all uses of force, including deadly force.
- 3 The San José Police Department Duty Manual, L1501.5, for Escalation of force: The general escalation of force to effect an arrest, prevent an escape, or overcome resistance is as follows: Voice; Hands; Chemical agent; Taser, electronic restraining device (ERD), electronic restraint transportation belt (ERTB), if available; Baton, canines, Yawara stick, if available; Carotid restraint; Less lethal projectiles, if available; Deadly force. Each situation is unique. The Department relies on the officer's judgment to employ an objectively reasonable level of force under each unique circumstance. Each incident in which force is used must meet the conditions specified in the Department. There is no requirement that Department members utilize each level before progressing to a higher level, as long as each level of force utilized is objectively reasonable under the circumstances.
- 4 The San José Police Department Duty Manual, L1524, for Reporting Use of other than deadly force: When using O.C. Spray, the ERD, the Taser, the baton, Yawara stick, "Carotid Restraint," canines, less lethal projectiles, or any other physical force in those instances that threaten the safety of an officer or other person, or to subdue an arrest combative individuals, the details of such use will be reported on a "Crime Report" (Form 200-2). Details will include: (1) Type of force used; (2) Reason for the use of force; (3) Extent of injury to the suspect; and (4) Other pertinent information the officer wishes to include. If the incident preceding the use of force would normally be reported on a "Crime Report," the details of the use of such force may be included in that report.

Each Use of Force complaint may allege more than one type of force and body area afflicted by the alleged use of force. However, only one count for degree of injury resulting from the alleged type of force used. The degree of injury ranged from minor to major, and included categories for “none” or “unknown” degrees of injury. For example, a citizen alleged when the officer effected the arrest, the officer pushed him/her to the ground before placing on a pair of tight handcuffs. The number accounted for the type of force used would be two: one for the use of hands and one for the use of handcuffs. The body area afflicted would be the limbs for the tight handcuffs and if bruising of the shoulder occurred from the impact of the fall to the ground, the torso area would be counted also as body area afflicted by the alleged force used. The degree of injury would be minor from the descriptive word of bruising; however, if the tight handcuffs caused laceration and required medical attention, the degree of injury would be counted as moderate.

The categories for type of force are

- **baton** was used to subdue a combative suspect by striking or hitting;
- **canines** was used to stop a fleeing complainant by biting;
- **car** such as slammed by the police car on the complainant's legs, pushed against the hood of the complainant's car, or thrown against a truck;
- **chemical agent** such as maced in the face;
- **gun** such as pointed at head or temple;
- **feet** such as leg sweeps or kicking the complainant;
- **ground** includes allegations of being pushed to the ground or being hit/slammed against the ground;
- **hands** were used in grabbing, pushing, pulling, or slapping the complainant;
- **tight handcuffs** causing pain or injury to the wrists of the complainant;
- **knee** such as kneed in the stomach or kneed in the back;
- **object** includes the officer's use of a flashlight;
- **other** includes the officer's use of a fence, garage door, wall, or table; and/or
- **unknown** because the case is an open investigation and the type of force used is unclear at the present time.

The body area afflicted by the use of force are

- **head** include hairs, eyes, nose, mouth, ears, or neck area;
- **torso** include the back, the stomach, the shoulder, or the hip;
- **limbs** include hands, arms and legs;
- **multiple body parts (MBP)** are injury to the head, the torso and the limbs;
- **unknown** because the case is an open investigation and the body area afflicted by the use of force is unclear at the present time.